

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2999 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

A.D. RABARI

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/12/1999

ORAL JUDGEMENT

Heard the learned advocate Mr. Bhatt for the
petitioner. Nobody is present on behalf of the
respondents.

The petitioner challenges the order dated 30th
June, 1987, by which his service as a Driver has been
terminated. It appears that under order dated 19th
November, 1987, the respondent no.2 herein appointed the

petitioner as a Driver in the payscale of Rs. 260-400 (then prevalent) on temporary basis. The petitioner continued to serve as a Driver till the date of termination of his service. Upon perusal of the impugned order, it appears that the post of Driver was sanctioned upto 30th June, 1987, and on 29th June, 1987, the vehicle was ordered to be condemned. Thus, after 30th June, 1987, neither was there a sanctioned post of Driver nor the vehicle to be driven. In that view of the matter, the termination of the service of the petitioner with effect from 30th June, 1987 after office hours, can not be said to be either illegal or arbitrary.

However, it appears that prior to his appointment as a Driver by the respondent no.2, the petitioner was serving as a Driver in the office of the Executive Engineer, Mehsana. The petitioner was initially appointed as a Peon in the office of the Executive Engineer, Public Health Project Division on 21st December, 1972, and was appointed as a Driver as aforesaid on 18th March, 1978. It is, therefore, contended that the petitioner's substantive appointment was that of a Peon and if the post of Driver was not available, the petitioner ought to have been reverted as a Peon and his service could not have been terminated. The contention is fallacious. Be it noted that the petitioner's appointment as a Peon in the year 1972 was in the office of the Executive Engineer and was appointed as a Driver in the year 1978 by the Executive Engineer. Hence, the petitioner can not be said to have been appointed as a Peon by the respondent no.2 as alleged. The petitioner's appointment by the respondent no.2 was a fresh appointment and except that his earlier service was valid for the purpose of pension and other retirement benefits, the same did not confer any other right upon the petitioner. The respondent no.2 had not appointed the petitioner as a Peon, nor was he serving under the respondent no.2 prior to 1st December, 1981. The petitioner, therefore, can not rely upon his earlier service rendered in some other Government Department and seek protection of service in the office of the respondent no.2.

However, it appears that by ad-interim order dated 2nd July, 1987, this court has protected the service of the petitioner. By further order dated 22nd July, 1987, the respondents were directed to continue the petitioner in service as a Driver or as a Peon. I am informed that pursuant to the said order, the petitioner has been continued in service as a Peon and since then new vehicles have been acquired by the office of the

respondents. In above view of the matter, though I am of the view that the termination of service of the petitioner, for the reasons recorded in the termination of order is legal, I do not consider it expedient to permit the said order to be operated at this delayed stage without considering the case of the petitioner to continue him in service either as a Driver or as a Peon.

The petitioner shall, therefore, within a period of six weeks from today make a representation to the respondent no.2 herein either to continue him in service as a Peon or to appoint him as a Driver. The respondent no.2 shall consider and decide the representation within a period of 8 weeks from the date of the receipt of the same. The decision of the respondent no.2 shall be final and binding upon the petitioner.

Subject to the above direction, the petition is dismissed. Rule is discharged. The interim relief dated 22nd July, 1987, shall continue to operate till the date of the communication of the decision of the respondent no.2 to the petitioner. There shall be no order as to costs.

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JOSHI